

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANTHONY B.,

Claimant

OAH No. N 2006020716

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter in Santa Rosa, California on July 25, 2006.

Nancy Ryan, Attorney at Law, represented the service agency North Bay Regional Center (NBRC).

Claimant Anthony B. was represented by his mother Lynda B.

The matter was submitted on July 25, 2006.

ISSUE

Whether Lynda B., claimant's mother, should be terminated as a Parent Coordinated Personal Assistance vendor for failure to submit a completed vendor packet to NBRC.

FACTUAL FINDINGS

1. Anthony B. (claimant) is a 20-year-old male born September 23, 1985. He is autistic and has severe behavioral problems, including sexual aggression. Claimant has had several unsuccessful placements in facilities licensed by the NBRC. Because licensed placement options did not meet claimant's needs, NBRC began working with Lynda B.,

claimant's mother, to develop an alternative residential plan similar to Supported Living for claimant.¹

2. Lynda B. was initially vendored as a respite provider and used respite at an extraordinary rate (i.e., she paid claimant's care givers more than the approved respite rate of \$6.96 per hour). By letter dated September 3, 2004, Hollie Smith, a NBRC Case Management Specialist, notified Lynda B. that she would have to be vendorized as a Parent Coordinated Personal Assistance provider in order for NBRC to continue to pay an hourly rate higher than the approved respite rate for services provided to claimant. Smith further advised that in order to become vendorized as a Parent Coordinated Personal Assistance provider, Lynda B. would be required to register with the Employment Development Department (EDD) as an employer and submit an Employer Identification Number (EIN) in order to bill NBRC for payroll taxes.

3. Under the NBRC Parent Coordinated Personal Assistance Program, the parent hires, trains and monitors, and coordinates the services provided by, personal assistants for his or her child, the consumer. These personal assistants help the consumer access the community, assist with activities of daily living, provide supervision and otherwise enable the consumer to live in the community. The parent-coordinator submits a monthly billing to NBRC for the services provided. The NBRC pays a lump sum amount to the parent-vendor each month to cover the services provided by the personal assistants up to a predetermined cost-effective amount, in this case \$7,522 per month.

4. Smith testified that she first discussed the requirement of EDD registration with Lynda B. no later than October 1, 2004. An October 1, 2004, addendum to claimant's IPP, signed by Lynda B., supports this assertion. It states in pertinent part:

A problem acknowledged by the ID team currently is that vendorization of Parent Coordinated Personal Assistance by North Bay has typically required registration by the parent at EDD in order to obtain an EIN for withholding and paying of UI [unemployment insurance] and DI [disability insurance]. It appears to Ms. [B.] that if she were to request funding needed to cover what she understands would be the cost for payroll taxes and workers compensation, she would then be above the cost effective amount. The ID team is unable to resolve this problem currently, and the deadline for renewal of the plan for October services is today. NBRC agrees in this IPP to waive the requirement for registration at EDD for one month, to allow this territory to be further explored by both parties. (Emphasis in the original.)

¹ Claimant has been living in an apartment with 24-hour care and supervision arranged by his mother and primarily funded by NBRC since October 2003.

5. An IPP addendum dated December 14, 2004, signed by Lynda B., notes that North Bay Housing Coalition had been providing consultations over the last several months to assist Lynda B. in developing a budget for an alternative residential plan. The addendum also notes:

Currently vendorization for Parent Coordinated Personal Assistance by North Bay has required concurrent proof of registration by the potential vendor at EDD in order to obtain an EIN for withholding and paying of UI and DI. Ms. [B.] has submitted a proposal & budget for a Flexible Supports plan (dated 10-18-04) that includes these factors, but raises the cost of the overall plan above the cost effective amount. North Bay Regional will only continue to fund services at or under the cost effective amount, and hence waives the requirements for registration at EDD until both parties can further explore this territory in the appeal process.

6. A fair hearing was held on September 21, 2005, before Administrative Law Judge M. Amanda Behe to determine the cost-effective amount for claimant's care. Lynda B. submitted two proposed budgets, both of which included proposed funding for workers' compensation insurance, liability insurance, unemployment insurance, FICA (Social Security and Medicare), payroll set up and state and federal taxes. Lynda B. argued, as she does in this proceeding, that by law she is required to pay payroll taxes and workers compensation, even though NBRC does not require her to pay these items, therefore the cost-effective amount should be increased to cover these items. Judge Behe, in rejecting this argument, noted that Lynda B. failed to identify any authority for her view that assistants paid under the cost-effective plan had to be employees, rather than the independent contractors used since October 2003. Judge Behe, after considering all of the evidence, including legal requirements for vendorization, determined the cost-effective amount to be \$7,522 per month.

7. An interdisciplinary team meeting was subsequently held on January 26, 2006. An addendum to the IPP, signed by Lynda B. and bearing the same date, notes:

North Bay Regional waived the vendor requirements until results of a fair hearing re cost effectiveness were obtained, due to the financial impact of the vendor requirements. The results of the fair hearing decision received the end of October [2005] (see OAH decision Nos. N2004110543 & N2005030144) support NBRC in maintaining the above stated [\$7,522/month] cost effective amount.

NBRC revised some of the vendor requirements for the Personal Assistance code and mailed a new vendor packet out to parent

which was received 12-2-05. NBRC previously asked that the parent complete and return the vendor packet by 1-30-06. Mrs. [B.] is currently requesting more time to completed the vendor packet given she is still reviewing the impact of the cost of taxes due on wages paid. She would like additional consultation with North Bay Housing Coalition to revise the plan to account for the tax costs related to NBRC vendor requirements for a tax ID #. A one time expenditure for N.B.H.C. (@ \$85.00/hr. for 10 hours) consultation would not put her plan over the cost effective amount.

6. Lynda B. subsequently filed an appeal regarding the NBRC vendorization requirements. A February 28, 2006, addendum to the IPP, notes:

[Lynda B.] has been given additional consultation time with North Bay Housing Coalition to revise her plans to account for tax costs related to NBRC vendor requirements for a tax ID #. The NBRC requirement for a completed vendor packet to be returned in order for services to proceed is pending a fair hearing review at this time.

After several continuances, the matter proceeded to fair hearing on July 25, 2006, approximately 22 months after the initial request for compliance with Parent Coordinated Personal Assistance vendorization requirements.

7. At hearing, Lynda B. testified she submitted a new vendor packet to NBRC in early December 2005, but acknowledged that the packet did not contain proof of EDD registration because she has not yet registered. NBRC has no record of receiving a vendor packet in December 2005. Even if Lynda B. did turn in a new packet, by her own admission it was not complete because she had not registered with EDD as required by NBRC. Lynda B. claims she did not register because the cost-effective amount is not sufficient to permit her to comply with all legal requirements (e.g., workers' compensation insurance and payroll taxes) that would be imposed on her as an employer. Lynda B. maintains that she has consistently attempted to comply with NBRC demands by repeatedly revising her proposed budgets to try to fit within the cost-effective amount, and that she is still willing to comply with NBRC requirements. However, she is hesitant to file with EDD because she feels she will not be able to meet all legal requirements for employers and does not want to violate the law. She also asserts that after turning in the vendor packet in December she contacted NBRC to find out what was required next, but was not provide with any guidance. Lynda B. contends that she should not be terminated as a parent vendor, but rather NBRC should be required to provide her further assistance in meeting the EDD registration requirement.

8. NBRC contends that it cannot legally continue to pay Lynda B. as a Parent Coordinated Personal Assistance provider if she does not meet legal requirements, including registration with EDD. It points out that the standard vendor agreement imposes an obligation

on Lynda B., as vendor, to meet all legal requirements.² With respect to its alleged failure to adequately assist Lynda B., NBRC maintains it has consistently worked with Lynda B. to enable her to satisfy all legal requirements, including temporarily waiving the requirement that she register with EDD and paying for numerous consultations with NBHC to assist her in developing a budget consistent with the cost-effective amount. NBRC requests that Lynda B. be ordered to comply with the EDD registration requirement, and if she fails to do so, that it be permitted to terminate her as a Parent Coordinated Personal Assistance provider.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Service Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.),³ the State of California accepts responsibility for persons with developmental disabilities (§ 4501) and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible (§ 4502, subd. (a)). The State agency charged with implementing the Lanterman Act is the Department of Developmental Services (DDS). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4620.)

2. In order to determine how an individual client is to be served, regional centers are directed to conduct a planning process that results in an individual program plan (IPP) designed to promote as normal a life as possible. (§ 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), and reflect the client's particular desires and preferences. (§ 4646; § 4646.5, subds. (a)(1), (a)(2) and (a)(4); § 4512(b); § 4648, subd. (a)(6)(E).)

² The NBRC Standard Vendor Agreement contains a section entitled Responsibilities as Private Vendors. Subdivision (a) of that section provides in pertinent part:

. . . It is further agreed and understood that NBRC will not be paying to, nor deducting from said [vendor] compensation, in whole or part, any federal, state, or local income taxes, self-employment taxes, State Disability Insurance (SDI), or Social Security taxes (FICA); nor shall NBRC insure or otherwise provide for VENDOR with respect to Workman's Compensation or unemployment benefits. VENDOR is solely responsible for declaring and/or paying any taxes, fines, interest or other fees which may be due as a result of said compensation.

Subdivision (b) provides "Individual vendors are responsible for providing adequate liability or other insurance for themselves. . . ." Subdivision (c) states vendors are responsible for their own tax liability.

³ All citations are to the Welfare and Institutions Code unless otherwise indicated.

3. Although an IPP must reflect the needs and preferences of the consumer (§ 4512, subd. (b)), a regional center is not mandated to provide all the services a consumer may require. A regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." (§ 4646, subd. (a).) A regional center also has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b) & 4651; and see *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

4. In this case, the cost-effective amount for claimant's care was determined, pursuant to fair hearing, to be \$7,522 per month. Lynda B. argues that she cannot satisfy all legal requirements for a Parent Coordinated Personal Assistance vendor and not exceed the cost-effective amount. Her contention is not persuasive. The cost of complying with the legal requirements for such vendorization was considered by Judge Behe in determining the cost effective amount. Once the cost-effective amount was determined, Lynda B. was required to develop a plan (that satisfied all legal requirements) and select services based on that total.

Lynda B. also contends that NBRC has failed to provide her with sufficient assistance to enable her to satisfy the EDD registration requirement. Again her contention is not persuasive. NBRC funded numerous consultations for Lynda B. with North Bay Housing Coalition to assist her with developing an alternative residential plan/budget consistent with the cost-effective amount. Moreover, there is no evidence that anything other than Lynda B.'s "belief" that she might be required to have workers' compensation insurance or pay payroll taxes prevented her from registering with EDD. Even if she were required to fund these items, an adjustment could be made to claimant's services to enable her to satisfy such requirements and still remain within the cost-effective amount.

ORDER

1. Claimant's appeal of North Bay Regional Center's decision to terminate her as a Parent Coordinated Personal Assistance vendor is denied.

2. The foregoing notwithstanding, Lynda B. shall have fifteen (15) days from the date of this decision to register with EDD and file proof of such registration with North Bay Regional Center. If Lynda B. timely registers with EDD and timely files proof of such registration with North Bay Regional Center she shall not be terminated as a Parent Coordinated Personal Assistance vendor for failure to register with EDD.

3. If Lynda B. fails to provide proof of registration with EDD to North Bay Regional Center within fifteen (15) days of the date of this decision, NBRC may terminate Lynda B. as a Parent Coordinated Personal Assistance vendor.

DATED: August 7, 2006

CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.